

# Vicarious Liability

*The CAO professional liability insurance program is available to CAO members, except in Ontario and Quebec, where provincial association programs exist. Periodically, the brokers and insurer for the CAO program provide insurance bulletins and information of interest to all members.*

Over the last few decades, the standard of care and level of responsibility expected from medical professionals including optometrists increased significantly, leading to an increase in lawsuits. All medical professionals should understand the principle of vicarious liability, especially professionals operating their own business or clinic.

## What is vicarious liability?

Vicarious liability is the law that enables a court to hold one party responsible for the actions of another, even though the party held liable for the misconduct has not committed any wrong of its own.<sup>1</sup> Vicarious liability is defined under the *respondet superior doctrine* (Latin for "let the master answer"). This doctrine makes the employer responsible for a lack of care on the part of an employee in relation to those to whom the employer owes a duty of care. For example, optometrists operating their own business or clinic become responsible for the negligent acts of their employees such as receptionists, secretaries, technicians or other staff and ultimately could be held liable to pay damages on their behalf if vicarious liability is established.

## How is vicarious liability established?

Over the last decade, the Supreme Court of Canada rendered various decisions which influenced the way vicarious liability is looked at. In *Bazley v. Curry* [1999], the Supreme Court of Canada highlighted two reasons in the finding of vicarious liability:

1. It provides a fair compensation to the victim
2. It avoids future harm.

Overall, to prove vicarious liability, a plaintiff must prove the following:

1. A close relationship must exist between the wrongdoer and employer to make a claim for vicarious liability appropriate
2. The tort is sufficiently connected to the wrongdoer's assigned tasks that the tort can be regarded as materialization of the risks created by the enterprise.<sup>2</sup>

## What can you do to reduce your exposure to vicarious liability?

No employer is exempt from facing vicarious liability. However, here are some tips on how to minimize exposure to vicarious liability:

- Conduct proper reference checking when hiring
- Provide appropriate training and maintain staff training log
- Defined procedures, authority level and policies and review them with employees
- Review employees' work and provide feedback
- Identify areas of vulnerability of your business, clinic and/or employees
- Address patients' complaints seriously

Optometrists may face liability of their employees when operating their own business or clinic, however, having the proper measures and guidelines in place as well as being aware of potential risks can certainly reduce exposure if faced with a lawsuit.

For more information about the CAO program, go to [www.harvardwestern.com](http://www.harvardwestern.com) and click on Services, Business, Canadian Association of Optometrists.

## Disciplinary matter coverage

Being faced with a complaint to the College or to a disciplinary committee can be extremely stressful and time consuming.

Did you know that optometrists who are members of the CAO professional liability insurance program through Harvard Western Insurance also benefit from additional coverage for disciplinary complaints? Under the ENCON Group disciplinary matter coverage, optometrists benefit from a \$25,000 limit per claim for the legal expenses incurred by a lawyer while under investigation or when called upon to appear before a disciplinary committee. This coverage is subject to a maximum limit of \$50,000 for the total claims reported during a policy period. Please note, that other policy terms, limitations, provisions and conditions could apply.

If you are subscribing to the CAO professional liability program and should a complaint be made against you, please contact Connie Middleton at [cmiddleton@harvardwestern.com](mailto:cmiddleton@harvardwestern.com).

1. Earl Phillips and Robert Cooper, McCarthy Tetraut, "Employer Liability for the Wrongful Acts of its Employees", 2003/11/14: page 1
2. Earl Phillips and Robert Cooper, page 2



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